IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WA.No. 589 of 2007()
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AGAINST THE JUDGEMENT IN WPC.2323/2007
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APPELLANT: WRIT PETITIONER
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BHARAT SANCHAR NIGAM LTD.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER, S.SANKARAN POTTI.

BY ADV. SMT.S.K.DEVI

RESPONDENTS: RESPONDENTS
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1. THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE, DEPARTMENT OF COMMERCIAL TAXES
MALLOOR ROAD, VANCHIYOOR, THIRUVANANTHAPURAM-3.

2. COMMISSIONER OF COMMERCIAL TAXES DEPT.
OF COMMERCIAL TAXES, GOVT. OF KERALA,
THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY (FINANCE)
SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL.G.P. (TAXES) SRI V.V.ASOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J.

&

M.N.KRISHNAN, J.

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W.A.No.589 OF 2007

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Dated this the 3rd day of April, 2007

JUDGMENT

K.S.Radhakrishnan, Ag.C.J.

Writ petition was preferred seeking a writ of certiorari to quash Exts.P1 to P6 assessment orders. This court considered the justification for approaching this court directly challenging the assessment orders and held that the remedy of the petitioner is to file an appeal against the assessment orders and dismissed the writ petition. We have gone through the assessment orders and have also gone through the judgment of the Apex Court in Bharat Sanchar Nigam Ltd. and another v. Union of India and others - (2006) 14 KTR 115 (SC) holding that the department can assess on the sale element of handset involved in the process of granting telephone connections.. We have also perused the objections filed by the BSNL before the assessing authority. The stand taken by the BSNL is that the BSNL

does not sell any handsets to its subscribers in providing the basic telephone services. It is pointed out that the handsets being provided to subscribers by the BSNL are only incidental to the service to facilitate the subscriber to avail the telephone service. It is also pointed out that in the event of the subscriber surrendering the telephone connection, the handset provided to him is retrievable. It is also pointed out that it does not confer the subscriber of any right and as such there is no discernible sale of the handset involving service. It is also pointed out that in the case of SIM cards provided by BSNL to a subscriber under Mobile Phone service, the same is given to the subscriber to gain access to the network. The SIM card given to the subscriber always remains as the property of BSNL and the subscriber is liable to return the SIM card to BSNL in the event of surrender of connection. Hence there is no discernible sale value in the transaction as well. It is proper to address the assessing authority. In the light of the above circumstances it is only appropriate to give a direction to reconsider Exts.P1 to P6 assessment orders after giving an opportunity to the assessee to be heard and also to produce evidence before the assessing authority in support of the contentions . The assessing authority shall consider those contentions and pass

appropriate orders. This writ appeal is disposed of directing the assessing authority to reconsider Exts.P1 to P6 and pass appropriate orders within three months from the date of receipt of a copy of this judgment and after giving notice to the appellant.

K.S.RADHAKRISHNAN,
(Ag.CHIEF JUSTICE)

M.N.KRISHNAN,
(JUDGE)

mt/-